

OCT 18 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN PEREZ-ROBLES,

Defendant - Appellant.

No. 04-10514

D.C. No. CR-03-01267-FJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

Submitted October 11, 2005**

Before: NELSON, T.G., WARDLAW, and TALLMAN, Circuit Judges.

Juan Perez-Robles appeals the 57-month sentence imposed following his guilty plea conviction for illegal reentry following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 18 U.S.C. § 3742(a).

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Perez-Robles contends that his sentence was imposed in violation of the Sixth Amendment because it was enhanced on the basis of the district court's determination that his prior California offense of unlawful sexual intercourse with a minor is a crime of violence. This contention is foreclosed by *United States v. Von Brown*, 417 F.3d 1077, 1079-80 (9th Cir. 2005) (stating that the district court made no impermissible finding of fact because whether a prior felony is a crime of violence "is a legal question, not a factual question coming within the purview of *Apprendi*, *Blakely*, and *Booker*"). However, because Perez-Robles was sentenced under mandatory Sentencing Guidelines, we remand for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error under *United States v. Booker*, 125 S. Ct. 738 (2005)).

REMANDED.